Supreme Court, U.S.
FILED
DEC 12 2003
OFFICE OF THE CLERK

No. 03-341

IN THE

Supreme Court of the United States

ALLSTATE INSURANCE CO.,

Petitioner,

v.

WILLIAM NOAH, TERRY NOAH, GEORGE GIAKOUMAKIS, MARY LOU GIAKOUMAKIS, CHERYL MONDHEIM, JAMES HOUSE and PAT HOUSE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

AMANDA FROST
Counsel of Record
BRIAN WOLFMAN
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-1000

December 12, 2003

QUESTION PRESENTED

Did legislation that narrowly extended a statutorily-created one-year limitation on the filing of lawsuits to benefit plaintiffs who were victims of fraud by their insurance companies violate the Contract Clause of the United States Constitution?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

1. Factual Background 1

2. Procedural Background 3

REASONS FOR DENYING THE WRIT 5

I. REVIEW SHOULD BE DENIED BECAUSE THE NINTH CIRCUIT'S DECISION IS INTERLOCUTORY. 7

II. THE ONE-YEAR LIMITATIONS PERIOD WAS SET BY STATUTE, NOT CONTRACT, AND THUS THE CALIFORNIA LEGISLATURE'S EXTENSION OF THAT TIME PERIOD DOES NOT IMPLICATE THE CONTRACT CLAUSE. 8

III. EVEN IF SECTION 340.9 ALTERED A CONTRACTUAL RIGHT, THE ALTERATION DID NOT CONSTITUTE A "SUBSTANTIAL IMPAIRMENT" OF A CONTRACTUAL RELATIONSHIP. 10

IV. THE CIRCUITS ARE NOT SPLIT REGARDING THE DEGREE OF DEFERENCE GIVEN TO STATE LEGISLATURES' JUSTIFICATIONS FOR SUBSTANTIALLY IMPAIRING CONTRACTS. 14

CONCLUSION 18

TABLE OF AUTHORITIES

CASES **Pages**

20th Century Ins. Co. v. Superior Court,
90 Cal.App.4th 1247 (2001), *cert. denied*,
535 U.S. 1033 (2002) 2, 6, 9

Allied Structural Steel Co. v. Spannaus,
438 U.S. 234 (1978) 16

American Construction Co. v. Jacksonville, T. & K.W. Railway Co., 148 U.S. 372 (1893) 7

Bialo v. Western Mutual,
95 Cal.App.4th 68 (2002) 6, 9

Calfarm Ins. Co. v. Deukmejian,
771 P.2d 1247 (1989) 4, 12

Campbell v. Holt, 115 U.S. 620 (1885) 10

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400 (1983) 10, 12, 16, 17

Garris v. Hanover Ins. Co.,
630 F.2d 1001 (4th Cir. 1980) 15

General Motors Corp. v. Romein,
503 U.S. 181 (1992) 9

Hamilton-Brown Shoe Co. v. Wolf Bros. Co.,
240 U.S. 251 (1916) 7

Hellinger v. Farmers Ins.,
91 Cal.App.4th 1049 (2001) 6

Mercado-Boneta v. Administracion del Fondo de Compensacion al Paciete,
125 F.3d 9 (1st Cir. 1997) 13, 15

Minnesota Ass'n of Health Care Facilities, Inc. v. Minnesota Dep't of Public Welfare, 742 F.2d 442
(8th Cir. 1984) 15

National Railroad Passenger Corp. v. Atchison, Topeka & Santa Fe Railway Co., 470 U.S. 451 (1985) 9

Nieves v. Hess Oil Virgin Islands Corp.,
819 F.2d 1237 (3d Cir. 1987) 9, 15

Prudential -LMI Com. Ins. v. Superior Court,
798 P.2d 1230 (1990) 2

Sal Tinnerello & Sons v. Town of Stonington,
141 F.3d 46 (2d Cir. 1998) 15

Veix v. Sixth Ward Bldg. & Loan Ass'n,
310 U.S. 32 (1940) 12

Vu v. Prudential Property & Casualty In. Co.,
33 P.3d 487 (2001) 5, 17

STATUTES AND FEDERAL RULES

California Code of Civil Procedure § 340.9 .... *passim*

California Insurance Code § 2071 ..... *passim*

OTHER

Robert L. Stern, et al., Supreme Court Practice (8th ed. 2002) 7

STATEMENT OF THE CASE

1. Factual Background

On January 17, 1994, homes owned by respondents William and Terry Noah, George and Mary Lou Giakoumakis, Cheryl Mondheim, and James and Patricia House ("Homeowners") were damaged by the Northridge Earthquake. Pet. App. 4. Over the next two years, the Homeowners filed claims with their insurer, petitioner Allstate, which assessed the earthquake damage to their homes. *Id.* 5. However, in May 1998, the Homeowners learned that the "engineering" reports that Allstate provided them during the claims adjustment process were not what they claimed to be. Although those reports purportedly contained an engineer's opinion of the earthquake damage after the engineer's personal inspection of the home, in fact no engineer had personally inspected the homes nor had any engineer drafted the "engineering" reports. *Id.* In addition, the reports were inaccurate and underestimated the damage and methods of repair. Consequently, the Homeowners had not been reimbursed by Allstate for the full amount of their damages. *Id.*

All of the insurance policies at issue were drafted in accordance with California Insurance Code § 2071, which establishes a standard insurance contract for all insurance policies that include coverage for fire damage. *See* Pet. App. 6-7. Under that statute, many of the contract terms are mandated by law and thus are not bargained-for provisions of the contract and cannot be altered by the

parties. One such mandatory element is the limitations period within which an insured can file a suit against the insurer. The statute requires that every insurance policy include the following statement:

> No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss.

Cal. Ins. Code § 2071. The one-year limitations period begins running when the insured becomes aware of appreciable damage, is tolled after the insured files a claim, and begins to run again after the insurer notifies the insured that the claim has been closed. *Prudential-LMI Com. Ins. v. Superior Court,* 798 P.2d 1230, 1242 (1990).

The California legislature, after extensive hearings, determined that significant numbers of earthquake victims had not been treated fairly by their respective insurers in the months and years following the Northridge earthquake. *See 20th Century Ins. Co. v. Superior Court*, 90 Cal.App.4th 1247, 1266-68 (2001) (discussing legislative history of California Insurance Code § 340.9), *cert. denied*, 535 U.S. 1033 (2002). To address that problem, the legislature enacted California Code of Civil Procedure § 340.9, which revives insurance claims for damages arising out of the Northridge earthquake that were barred

"solely because the applicable statute of limitations has or had expired." The statute provides in relevant part:

> Notwithstanding any other provision of law or contract, any insurance claim for damages arising out of the Northridge earthquake of 1994 which is barred as of the effective date of this section [January 1, 2001] solely because the applicable statute of limitations has or had expired is hereby revived and a cause of action thereon may be commenced within one year of the effective date of this section.

Section 340.9 is restricted in several respects: It applies only to cases in which the insured contacted the insurer prior to January 1, 2000, regarding potential Northridge earthquake damage, § 340.9(a), and it provides that insureds must bring new claims within a single year (that is, between January 1, 2001 and January 1, 2002). § 340.9(b). Section 340.9 does not target particular individuals or insurers, but rather applies to all homeowners, regardless of the details of their situation or the identity of their insurer. In short, § 340.9 allows access to the judicial process for a limited period so that courts may determine who was, and who was not, treated fairly.

2. Procedural Background

On September 2, 1998, the Homeowners filed suit against Allstate, alleging negligent misrepresentation, intentional misrepresentation, breach of the covenant of good faith and fair dealing, and breach of contract. Pet. App. 5. Allstate filed motions for summary judgment against the Homeowners, arguing that all their claims were barred by the one-year limitations period in the insurance contracts. *Id.* The district court granted summary judgment against all the Homeowners.

The Ninth Circuit reversed, holding that § 340.9 revived the Homeowners' claims otherwise barred by the time limit set by California Insurance Code § 2071. Pet. App. 15. The court rejected Allstate's contention that § 340.9 violates the Contract Clause. Although the court held that § 340.9 substantially impaired the contracts between Allstate and the Homeowners, it concluded that the "severity of the impairment is significantly mitigated [] by the fact that the California insurance industry is heavily regulated." *Id.* 17 (citing *Calfarm Ins. Co. v. Deukmejian*, 771 P.2d 1247, 1262 (1989)). In addition, the court reasoned that § 340.9 was less severe an impairment than it would have been had the original one-year limit been "bargained for," rather than mandated by the California Insurance Code. *Id.* 18. Furthermore, the court noted that § 340.9 is limited in scope, reviving the claims of only those plaintiffs who had contacted their insured prior to January 1, 2001, and who then filed suit within the specified one-year period. *Id.* 19-20.

Turning to the legislature's justification for altering the limitations period, the court found that the statute was enacted to accomplish the "legitimate public purpose" of "'bring[ing] needed relief to the victims of the Northridge earthquake'" who had been misled about the extent of their losses by their insurers. Pet. App. 18 (quoting Sen. Comm. on Judiciary, Analysis of Sen. Bill. No. 1899 (1999-2000)). The court rejected Allstate's contention that the California Supreme Court's recent decision in *Vu v. Prudential Property & Casualty In. Co.*, 33 P.3d 487 (2001), which permitted the filing of claims beyond one year upon a showing of misrepresentation, obviated the legislature's legitimate purpose for enacting § 340.9, explaining that § 340.9 provides broader relief than is available under *Vu*. Pet. App. 19.

REASONS FOR DENYING THE WRIT

As a threshold matter, certiorari should be denied because the Ninth Circuit's decision is interlocutory, and because this is not the rare case in which interlocutory review is justified by other compelling factors. In any case, the Contract Clause issue on which Allstate seeks review is not squarely presented because the California statute at issue did not abrogate a bargained-for contract term, but rather altered a time period set by *another statute*. This case therefore does not implicate the Contract Clause.

Even if this case squarely presented the question stated in the petition, it would not be worthy of review.

Allstate has not alleged that there is any division in the circuits regarding the application of the Contract Clause, nor has Allstate demonstrated that the Ninth Circuit failed to follow this Court's Contract Clause precedent. Moreover, this Court just recently denied certiorari on a previous petition filed by amicus curiae 21st Century Insurance Company (previously 20th Century) raising this exact same issue, *20th Century Ins. Co. v. Superior Court,* 90 Cal.App.4th 1247 (2001), *cert. denied* 535 U.S. 1033 (2002)), a fact that Allstate fails to mention in its petition.

In contrast, amicus 21st Century asserts that there is confusion in the circuit courts regarding the degree of deference to be given a legislature's justification for abrogating contract terms and claims that the Ninth Circuit gave more deference than this Court's precedent permits. However, none of the cases cited by 21st Century acknowledge any division in the circuits on this issue, and a close examination of those cases demonstrates that every circuit court is applying the standards enunciated by this Court. Moreover, the Ninth Circuit's conclusion is in accord with the three decisions issued by the California state courts on this very same issue. *See 20th Century*, 90 Cal.App.4th 1247 (2001); *Hellinger v. Farmers Ins.*, 91 Cal.App.4th 1049 (2001); *Bialo v. Western Mutual*, 95 Cal.App.4th 68 (2002). In short, there is no disagreement among the courts of appeals regarding the standards for applying the Contract Clause generally, or among the courts that have addressed the specific question whether the legislation challenged here is constitutional.

I. REVIEW SHOULD BE DENIED BECAUSE THE NINTH CIRCUIT'S DECISION IS INTERLOCUTORY.

This Court should deny review because the decision below is interlocutory. The district court granted summary judgment against the Homeowners on the ground that all of their claims are barred by the one-year limitations period. The Ninth Circuit reversed and remanded for a determination on the merits of the Homeowners' claims. Thus, there has been no trial, let alone a final decision in the litigation.

Although this Court has jurisdiction under 28 U.S.C. § 1254(1) to review interlocutory decisions of federal courts of appeals, it rarely does so and this case is not the unusual case in which interlocutory review is appropriate. "Ordinarily, in the certiorari context, 'this court should not issue a writ of certiorari to review a decree of the circuit court of appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause.'" Robert L. Stern, et al., Supreme Court Practice § 4.18, at 258 (8th ed. 2002) (quoting *American Construction Co. v. Jacksonville, T. & K.W. Railway Co.*, 148 U.S. 372, 384 (1893) (emphasis added)); *see also, e.g., Hamilton-Brown Shoe Co. v. Wolf Bros. Co.*, 240 U.S. 251, 258 (1916) (interlocutory decisions are reviewed only "in extraordinary cases"). The posture of this case is anything but "extraordinary." The Homeowners filed a complaint in district court alleging

breach of contract and other tort claims based on Allstate's conduct regarding their efforts to collect on their insurance polices. Allstate retains all defenses it may have aside from its contention that the claims are time-barred, and it may well prevail before the district court on the merits of the Homeowners' claims. If Allstate is successful, no further review would be necessary. Of course, the Homeowners believe that their cases are meritorious and that they will prevail in district court. In that case, there will be a final judgment from which Allstate may appeal and raise the Contract Clause issue at that time.

II. THE ONE-YEAR LIMITATIONS PERIOD WAS SET BY STATUTE, NOT CONTRACT, AND THUS THE CALIFORNIA LEGISLATURE'S EXTENSION OF THAT TIME PERIOD DOES NOT IMPLICATE THE CONTRACT CLAUSE.

Allstate asks this Court to determine whether it is "consistent with the Contract Clause of the United States Constitution for the California legislature to deprive all insurers of their *contractual right* to be free of time-barred claims . . . ." Pet. i (emphasis added). Allstate's question presented mistakenly presumes that insurers negotiated a contract guaranteeing the right to be free of claims after the one-year limitation period expires. However, that one-year time limit was not a bargained-for contract term but rather was a time limit set by statute. If certiorari were granted in this case, the Homeowners would argue that the challenged legislation did not impinge on a contractual

right, but rather simply extended a previously existing statute of limitations. *Cf. General Motors Corp. v. Romein*, 503 U.S. 181, 186-191 (1992) (declining to reach question whether a contract was "substantially impaired" after concluding that challenged legislation altered statutory requirement, not contract term). Thus, this case does not present the question whether the legislature's extension of that time period substantially impaired a "contractual right" in violation of the Contract Clause.

Parties challenging legislation under the Contract Clause "bear the burden of demonstrating that they in fact possess contractual rights or obligations altered by the law." *Nieves v. Hess Oil Virgin Islands Corp.*, 819 F.2d 1237, 1243 (3d Cir. 1987) (citing *National Railroad Passenger Corp. v. Atchison, Topeka & Santa Fe Railway Co.*, 470 U.S. 451, 472 (1985)). Allstate cannot make this showing. Before § 340.9 was enacted into law, California Insurance Code § 2071 required that insureds bring claims within one year of the inception of the loss. As the California Court of Appeal stated in a case raising the identical issue, the "'contractual' limitation period in [the insurer's] policy is mandated by statute (Ins. Code § 2071). It is therefore properly treated as a *statute* of limitations which does *not*, upon its expiration, endow in the defendant a 'vested right.'" *20th Century Ins. Co. v. Superior Court,* 90 Cal.App.4th 1247, 1272 (2001) (emphasis in original), *cert. denied,* 535 U.S. 1033 (2002); *accord Bialo*, 95 Cal.App.4th at 81 ("We reject . . . amici's claim that because the Legislature enacted the one-year notification period by requiring its insertion in the policy

rather than by enacting an express limitation period, it somehow is not a limitations period."); *see also Campbell v. Holt*, 115 U.S. 620, 623 (1885) (legislature's expansion of statute of limitations did not violate the Contract Clause). Although the Ninth Circuit below analyzed the legislation as if it abrogated a negotiated contract term, it also recognized that this limitations period was "not bargained for" by Allstate or the Homeowners, but rather was "subject to an existing statute." Pet. App. 18. In sum, because § 340.9 altered a statutory requirement, not a contract term, it does not raise the Contract Clause concerns that Allstate asks this Court to address.

III. EVEN IF SECTION 340.9 ALTERED A CONTRACTUAL RIGHT, THE ALTERATION DID NOT CONSTITUTE A "SUBSTANTIAL IMPAIRMENT" OF A CONTRACTUAL RELATIONSHIP.

Even if § 340.9's alteration of the limitations period in § 2071 is considered an alteration of a "contract," § 340.9 did not "substantially impair" a contractual relationship. Whenever legislation is challenged under the Contract Clause, the court must ask two questions. First, the court considers whether the relevant enactment constitutes a "substantial impairment" of a contractual relationship. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983). Only if that question is answered in the affirmative does the court consider the second question: whether the impairment is justified given the need for, and reasonableness of, the

enactment, according due deference to the legislature's judgment on these questions. *Id.* at 411-412. In this case, as we demonstrate below, section 340.9 does not impose a "substantial impairment" because 1) the alteration in the limitations period has only a minor effect on insurance contracts; and 2) the insurance industry is heavily regulated in California and the original limitations period in § 2071 was itself a creature of government regulation, making it less likely that § 340.9 disrupted settled expectations. Therefore, there would be no need to reach the question whether such an impairment was justified, which is the only issue on which a split in appellate authority is asserted.[1]

1. Although section 340.9 extends the existing one-year statute of limitations, that extension is very limited in scope: It applies only to cases in which the insured contacted the insurer prior to January 1, 2000, regarding

---

[1] Petitioner does not assert that the courts of appeals are split on any issue raised in its petition. However, amicus 21st Century Insurance Company claims that the courts of appeals have applied "inconsistent" levels of deference to state legislative judgments justifying impairment of contracts. Amicus Br. 8. As explained in Part IV, *infra*, there is no split in the courts of appeals regarding application of the Contract Clause, and every case cited by 21st Century as demonstrating the alleged division applied the same legal standard as the Ninth Circuit when reviewing legislation challenged under the Contract Clause.

potential Northridge earthquake damage, § 340.9(a), and it provides that insureds must bring new claims within a single year, § 340.9(b).

Although Allstate contends that the "impairment of the contract is absolute for each affected contract," Pet. 9, in fact, the contract remains almost completely unchanged. Insurers are not held liable for types or amounts of damage for which they did not originally agree to pay. Nor are insurers required to pay for damage that occurred during a period in which they did not agree to cover the insured. The only change is one affecting the limitations period within which insured can sue the insurer under the contract, and that period is only narrowly extended.

2. In "determining the extent of the impairment, [courts] are to consider whether the industry the complaining party has entered has been regulated in the past." *Energy Reserves*, 459 U.S. at 411. If the contract involves a heavily-regulated industry, such as the insurance industry in California, where the rights and obligations of the contracting parties are known in advance to be subject to change based on social, economic, and political needs, then legislation affecting that contract is less likely to disrupt settled expectations. *See Calfarm Ins. Co. v. Deukmejian*, 771 P.2d 1247, 1262 (1989) ("Insurance []is a highly regulated industry, and one in which further regulation can reasonably be anticipated."). In such circumstances, the challenged legislation will less likely be considered a substantial impairment of a contract. *Veix v. Sixth Ward Bldg. & Loan Ass'n*, 310 U.S. 32, 38

(1940) (noting that when one "purchase[s] into an enterprise already regulated in the particular to which he now objects, he purchase[s] subject to further legislation upon the same topic.").

Although petitioner does not deny that the insurance industry in California is heavily regulated, it argues that "the proper question is not whether the industry was regulated generally, but whether it was regulated in the particular respect at issue." Pet. 13 (internal quotation marks omitted). Petitioner next contends that "there is no evidence that insurers have been subject to regulation of the contractual limitations provision." *Id.* 14. Petitioner is incorrect. The contractual limitations period affected by section 340.9 was originally set by *another* statute — § 2071. That the original one-year limitations period was itself the product of government regulation is not just "evidence," it is concrete proof that insurers "have been subject to regulation of the contractual limitations provision." *See, e.g., Mercado-Boneta v. Administracion del Fondo de Compensacion al Paciete*, 125 F.3d 9, 14 (1st Cir. 1997) ("Just as the legislature created [a government insurance agency] because of an insurance crisis, it was reasonable to expect that the legislature could terminate [that agency's] existence in the event that [the agency] did not fulfill its purposes, or a new crisis ensued.").

IV. THE CIRCUITS ARE NOT SPLIT REGARDING THE DEGREE OF DEFERENCE GIVEN TO STATE LEGISLATURES' JUSTIFICATIONS FOR SUBSTANTIALLY IMPAIRING CONTRACTS.

Amicus 21st Century Insurance Company asks this Court to grant the petition to resolve alleged confusion in the lower courts regarding the degree of deference to give legislatures in justifying legislation that substantially impairs contractual rights. As explained above, this Court should not reach this issue because 1) the decision below is not final; 2) the legislation at issue here did not affect a "contractual right"; and 3) even if the one-year limit on filing lawsuits had been a "contractual right," the minor extension of that period did not "substantially impair" insurers' contracts. However, even if the issue were squarely presented, it would not be worthy of this Court's review.

Amicus argues that the circuit courts apply "inconsistent levels of deference to state legislative judgments." Amicus Br. 8. According to the amicus, the Courts of Appeals for the First, Second, Third, Fourth and Eighth Circuits conduct an appropriately rigorous review to determine whether challenged state legislation is "drafted reasonably to remedy the stated public purpose," while the Ninth and Eleventh Circuits "in the name of deference, have abdicated completely" their obligation to

review the legislature's justifications for such legislation. Amicus Br. 8. The alleged circuit split is illusory.

The cases cited by amicus do not support its contention that the appellate courts apply different degrees of deference to a legislature's views regarding the necessity for legislation altering contract terms. In *every* decision cited by amicus 21st Century, the court explicitly stated that it must give deference to the legislative judgment regarding the necessity and reasonableness of the legislation at issue. *See Mercado-Boneta*, 125 F.3d at 16 ("We thus accord considerable deference to the Commonwealth's assessment of the reasonableness and necessity of Act No. 4."); *Sal Tinnerello & Sons v. Town of Stonington*, 141 F.3d 46, 54 (2d Cir. 1998) ("We must accord substantial deference to the Town's conclusion that its approach reasonably promotes the public purposes for which the ordinance was enacted."); *Nieves*, 819 F.2d at 1249 ("[W]e will apply the deferential standard of review to make the requisite overall determination of reasonableness.") (internal quotation marks omitted); *Garris v. Hanover Insurance Co.*, 630 F.2d 1001, 1009 n.6 (4th Cir. 1980) ("In making an independent constitutional judgment, we of course owe proper deference to the prior legislative judgment in enacting the challenged provision . . . ."); *Minnesota Ass'n of Health Care Facilities, Inc. v. Minnesota Dep't of Public Welfare,* 742 F.2d 442, 450 (8th Cir. 1984) ("Deference is given to the legislative judgment concerning the necessity and reasonableness of economic and social regulation which affects private contracts.").

These courts, like the Ninth Circuit here, adhered to *Energy Reserves*, 459 U.S. at 412-13, in which the Court stated that "courts [should] properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *See also id.* at 417 n.25 ("[P]rovided 'legislature is functioning properly, selection of a public purpose and determination of necessity and appropriateness should be left to it.'") (quoting Note, 89 Yale L.J. at 1645); *id.* at 418 ("Nor are the means chosen to implement these purposes deficient, particularly in light of the deference to which the Kansas Legislature's judgment is entitled."). Deference to legislative judgments is the standard consistently applied by this Court and every circuit court when determining whether legislation impairing contract terms is reasonable and necessary.

Although here the Ninth Circuit panel properly gave some deference to the legislature's reasoning — as it is required to do by *Energy Reserves* — the panel did not "abdicate" its duty under the Contract Clause to scrutinize the justification for the legislation. First, the court noted that the impairment was minimized by the heavy regulation of the insurance industry in general, by the previous legislation concerning the time limit for filing claims in particular, and by the legislation's limited application. Pet. App. 16-19. Because these factors reduced the degree of impairment, the standard for judging its necessity is similarly relaxed. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978). Next, the court found that § 340.9 was enacted to accomplish a legitimate public purpose — protecting the victims of the

Northridge earthquake who had been misled by their insurers about the extent of their losses — that was clearly stated in the provision's legislative history. Pet. App. 18. Finally, the court addressed, but ultimately rejected, Allstate's contention that the legislation was unnecessary after the California Supreme Court's application of the doctrine of equitable estoppel in *Vu*. The court noted that section 340.9 provides better protection that *Vu* because it allows insureds to bring claims without having documentary proof of being misled by insurers. Pet. App. 19. Moreover, *Vu* was decided *after* § 340.9 was enacted into law. Thus, even if *Vu* had rendered § 340.9 unnecessary, that decision would not call into question the legislature's motives in enacting the statute for the legitimate public purpose of protecting insureds, who had no clear legal recourse at the time the legislation went into effect. *See Energy Reserves*, 459 U.S. at 411 ("The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.").

In short, the Ninth Circuit thoroughly analyzed the legislature's motives, the reasonableness and necessity of the legislation, and Allstate's objections before concluding that the legislation was constitutionally permissible. The Contract Clause requires no more.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

Amanda Frost
Counsel of Record
Brian Wolfman
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-1000

December 12, 2003